

ZONING BOARD OF APPEALS

March 11, 2002

Agenda: 7:30 p.m. - Roll Call

Motion to accept minutes of 02/25/02 meeting.

PRELIMINARY MEETING:

1. **MT. AIRY ESTATES** - Request for 6 ft. front yard and 1 ft. rear yard variances for front and rear decks at 2103 Patriots Court in an R-3 zone. (77-5-13).
2. **COPLAN, KAREN** - Request for 24.8 ft. front yard variance for existing structure with attached garage at 18 Cherie Lane in an R-4 zone. (44-1-36).
3. **POTTER, LAURA** - Request for 11 ft. front yard variance to construct covered porch at 108 Holly Drive in an R-4 zone. (17-3-4).
4. **BROWN, DONALD** - Request for 35 ft. 5 in. road frontage variance to construct a single-family residence on Cedar Avenue in an R-4 zone. (23-1-51).
5. **CLEEVES/GATT** - Request for use variance for conversion of single-family to two-family at 38 Quassaick Avenue in an NC zone. (14-7-9).

PUBLIC HEARING:

6. **DIGERATU, MIRCEA** - Request for 73.5 ft. lot width and 18.5 ft. road frontage to construct a single-family residence at 537 Beattie Rd. in R-1 zone. (51-1-83.12).
7. **DEAN, SAMUEL** - Request for variation of Sec. 48-14A(4) to allow a shed to project closer to road than principle structure on corner lot, 15 Clintonwood Dr. in an R-4 zone.
8. **FIDANZA, FRANCO** - Request for 22 ft. front yard variance for addition at Planet Wings on Windsor Highway in a C zone. (45-1-40.21).

Formal Decisions: (1) Betrix (2) Sisters of Presentation

Pat 563-4630 (o) - 562-7107 (h)

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

MARCH 11, 2002

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE
MICHAEL REIS
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

PATRICIA CORSETTI
ZONING BOARD SECRETARY

ABSENT: LEN MCDONALD

REGULAR MEETING

MR. TORLEY: I'd like to call the March 11, 2002 zoning board of appeals meeting to order. We don't have the minutes ready yet but I will entertain a motion about reorganization.

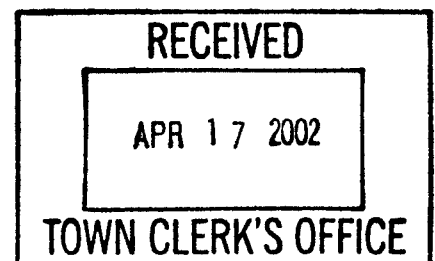
MR. RIVERA: I'd like to make a motion to nominate all staff members and officers.

MR. TORLEY: The existing.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA AYE
MR. REIS AYE



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MR. KANE

AYE

MR. TORLEY

AYE

PRELIMINARY MEETING:

MT. AIRY ESTATES

Lawrence Wolinsky, Esq. appeared before the board for this proposal.

MR. TORLEY: Request for 6 ft. front yard and 1 ft. rear yard variances for front and rear decks at 2103 Patriot Court in an R-3 zone.

MR. WOLINSKY: I'm here on behalf of the applicant and I believe principally we're here to answer any initial questions and get a public hearing schedule. These are two very minor and benign variances resulting out at the Reserve which is Mt. Airy Estates. As you pointed out one is a one foot rear yard variance resulting from an encroachment by a wooden deck and second one is 6 foot front yard variance resulting from a concrete stoop.

MR. TORLEY: My only concern really on these is this is not going to be a continual matter in Mt. Airy Estates?

MR. WOLINSKY: Absolutely not.

MR. TORLEY: Houses are going to be built as they go in will fit within the district?

MR. WOLINSKY: Yes. This was a builder's, this was the model and it was the builder's misinterpretation of whether something such as porch or a stoop could encroach into the front yard. I think the building inspector has set him straight and everything.

MR. KANE: Cause honestly you probably we won't look favorably coming in forever.

MR. WOLINSKY: I understand.

MR. TORLEY: There have been builders, what I call bi-levels with the back of the bi-level at the rear yard line so you couldn't put a deck off the second story legally, that's not the thing we're going to tolerate.

MR. WOLINSKY: This is a one foot encroachment into a 30 foot setback, so this really is a, you know, it's a minor kind of variance and it's not, you know, but I hear your message and I'm more than happy to pass that on.

MR. TORLEY: Speaking for the developer, you're going to say that the houses will not need variances for the standard size decks?

MR. WOLINSKY: Correct.

MR. KANE: If you would for the public hearing just bring a couple pictures.

MR. WOLINSKY: We submitted them with the application.

MR. KANE: Thank you. Accept a motion?

MR. TORLEY: Yes.

MS. CORSETTI: Do you have them?

MR. WOLINSKY: I know they were submitted, I have photocopies.

MS. CORSETTI: Bring them in for the public hearing.

MR. WOLINSKY: Okay, I'll mount them on the board.

MR. KANE: Move that we set up Mt. Airy Estates for the public hearing on their requested variances for 2103 Patriot Court.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

COPLAN, KAREN

Mr. Joel Coplan appeared before the board for this proposal.

MR. TORLEY: Request for 24.8 ft. front yard variance for existing structure with attached garage at 18 Cherie Lane in an R-4 zone.

MR. COPLAN: My name is Joel Copland, Karen's husband. Back in the late 70's, we took out a building permit to put in a garage and I wasn't astute enough at the time to realize that I have to apply for a C.O. on that permit within a certain amount of time. Now we're looking to get a C.O. for our home and with the zoning changes I'm applying for a variance of 24.8 feet. At that time I did meet setback requirements but with the change in the zoning, I understand I no longer meet that requirement.

MR. KANE: What brings you in at this point, refinance?

MR. COPLAN: No, it's just we wanted to have a, get a C.O. for the house cause we knew that it would be something that we'd need down the road.

MR. TORLEY: Let me tell you why we have these preliminary meetings, for everybody in the audience as well, by state law, all of our decisions have to be made at a public hearing. We have these preliminary meetings so you can get some idea of the questions we're going to be asking you at a public hearing and vice versa, so nobody is surprised so we don't want anybody to be sandbagged.

MR. KANE: There's a lot of towns where it's a one shot deal, if you come in, if you're prepared, fine, if you're not, too bad. So we set it up so there's a preliminary, we can request information from whomever and pictures, whatever we need to make an intelligent decision.

MR. COPLAN: We have some photographs.

MR. KANE: Yo'ure sure on the measurement on the 24.8

it's going to be enough?

MR. BABCOCK: Yeah, there's a certified survey in the file that was submitted.

MR. KANE: Just want to make sure with your 24.8 that you're not off a little bit. And if you go to refinance or something and they re-measure it and you're off .1, you're back here again.

MR. KANE: You said that the attached garage has been up since about the late 70's so it's been up 20 odd years?

MR. COPLAN: Yes.

MR. KANE: Any complaints formally or formally about the garage?

MR. COPLAN: No.

MR. KANE: Similar to other garages?

MR. COPLAN: Yes.

MR. KANE: Creating any water hazards or runoffs?

MR. COPLAN: No. Actually, Cherie Lane is a small street with four homes, we're the third, there's, the only thing in front is Cherie Lane and on the other side is woods going into the creek.

MR. KANE: Standard questions so that you should be prepared for what you're going to run into.

MR. TORLEY: He has two front yards?

MR. BABCOCK: If you look at the map, Mr. Chairman, it's quite difficult, actually, Forest Hill, yes, excuse me, I'm sorry, I thought you meant as far as the road that went around Cherie Road that kind of ends there and becomes a driveway.

MR. TORLEY: But it fronts on two roads?

MR. BABCOCK: Forest Hill and on Cherie.

MR. TORLEY: Which is the front yard he's encroaching on?

MR. BABCOCK: Cherie Lane.

MR. KRIEGER: Which way does the house face?

MR. BABCOCK: Cherie Lane. Do you see the survey, Mr. Chairman?

MR. TORLEY: No, I don't have one.

MR. BABCOCK: See what they assumed is the lot line in 1979, they followed the curve.

MR. COPLAN: When I had a survey, I realized that the lot line was right in the middle of that second driveway.

MR. BABCOCK: Yes.

MR. TORLEY: When you come in for a public hearing, appreciate some photographs.

MR. COPLAN: Save these for the public hearing?

MR. KRIEGER: Yes, and bring a copy of the survey.

MR. TORLEY: The other thing I'm going to tell you and all the audience members too, you'll be sending out notifications to all your neighbors that you're going to have a public hearing for these requests, it's a good idea to talk to your neighbors because it's a legalese on the notice that goes out and so they can make sure that you're not putting a toxic waste dump, just a garage, it helps a lot, so talk to your neighbors about what you're doing.

MR. COPLAN: Do I learn whom I have to contact?

MR. TORLEY: There's a, we have instructions for you.

MR. KANE: Accept a motion?

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MR. TORLEY: Yes.

MR. KANE: Move we set up Karen Coplan for a public hearing on requested variance at 18 Cherie Lane.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

POTTER, LAURA

Mr. Scott Potter appeared before the board for this proposal.

MR. TORLEY: Request for 11 ft. front yard variance to construct covered porch at 108 Holly Drive in an R-4 zone.

MR. POTTER: I'm her husband, Scott. Good evening, I'm here just to go over what I'd like to do is put a covered porch on my existing house. I live at 108 Holly Drive in Lacey Field and I'm interested in putting on a covered porch that's 6 x 30. And it's just going to enhance the look of the house. What I need is a variance because I need 35 feet and I have 24 now so I'm looking for a variance for 11 feet.

MR. TORLEY: So the house as it sits it's in the front yard?

MR. BABCOCK: The house right now is 30.2 feet off the road, the requirement there is 35 feet, whether that changed since the house has been built, I'm not sure.

MR. POTTER: It hasn't changed the structure, we have added onto the structure.

MR. BABCOCK: The legal requirement. And the covered porch he's allowed 6 x 8 entranceway to project into the front yard. Anything bigger would be part of the setback.

MR. TORLEY: Six or eight feet out?

MR. BABCOCK: Six feet out, eight foot wide, he's going 6 foot out but he's going 30.

MR. KANE: But he would be here anyway if he went to resell or finance?

MR. BABCOCK: No, he's got, there's, I'm assuming there's a C.O. on the house, I don't know why the 30 feet is there.

MR. TORLEY: When was the house put up?

MR. POTTER: Hosue was built in 1941 and 1995, we added a family room on to the back which we went through all the proper zoning and we also added a screened porch and what we want to do is attach the screened porch to the front covered porch.

MR. TORLEY: Does the code say 6 x 8 feet or 6 feet out?

MR. BABCOCK: Six feet out and eight feet long.

MR. TORLEY: It says 8 feet long?

MR. BABCOCK: Yes.

MR. KANE: Six feet out is one thing.

MR. BABCOCK: And it's, Mr. Chairman, it says it's got to be, it can't be a roofed over, got to be open, so it is an entranceway they allow you.

MR. TORLEY: Trying to save you something.

MR. POTTER: What I do want to do is put the covered porch with spindles in the front so it will come out 6 feet, it will go 30 feet across the front and attach to the existing screen porch, which is on the left side of the house, if you look from street.

MR. TORLEY: So you have to be here.

MR. POTTER: I have pictures here if you'd like.

MR. TORLEY: Bring them again for the public hearing.

MR. POTTER: We want to put the front porch in the front and extend right onto the screened in area.

MR. KANE: With the changes to the front of the house, would that keep it similar to other homes in the area, not exactly but similar?

MR. POTTER: There are houses who have added front

porches on and it will keep to the same character of the house.

MR. KANE: Not going to create any water hazards, runoffs?

MR. POTTER: No, it's a very flat piece of property.

MR. KANE: You would consider the porch and roofing more of a safety issue for you?

MR. POTTER: Yeah, that's one of the reasons why we want to put it on.

MR. KANE: Thank you.

MR. TORLEY: Gentlemen?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Motion that we set up the Potters for their requested variance at Holly Drive.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

BROWN, DONALD

Mr. Donald Brown appeared before the board for this proposal.

MR. TORLEY: Request for 35 ft. 5 in. road frontage variance to construct a single-family residence on Cedar Avenue in an R-4 zone.

MR. BROWN: I believe it's Cedar Lane. Yes, the access on Cedar Lane is 24 1/2 feet and I believe the requirement is 60 feet and this is one family home and my wife and I want to build there on 1.3 acres so.

MR. BABCOCK: Do you have a copy of this survey, Mr. Chairman?

MR. TORLEY: I have a tax map.

MR. BABCOCK: Clarify it a little bit.

MR. KANE: Your property right here belongs to somebody else?

MR. BABCOCK: Yes, see where it says proposed drive?

MR. BROWN: This belongs to a development. What's the name of that?

MR. BABCOCK: This is the town right-of-way goes like this.

MR. KANE: So he has just enough to get into that and this is owned by Squire Village in the back, that's the only way into the land?

MR. BABCOCK: Right.

MR. KANE: For the record, the opening that you're showing on that map right there, that's the only access that you have to that parcel?

MR. BROWN: That's correct, yeah, there's no access from Sunrise Terrace, only just from--

MR. KANE: Just to get it in the record, thank you.

MR. BROWN: Yes, sir.

MR. TORLEY: This proposed drive is over someone else's land?

MR. BABCOCK: No. If you look at the tax map that goes along with that, Mr. Chairman, you have to compare the two and you'll see the town easement does that zigzag right in front of his property, that's a legal access to Caesar's Lane.

MR. KANE: So there's no possibility of adding any land to increase the frontage.

MR. TORLEY: And the town easement can constitute--

MR. BABCOCK: It's a town road. I said easement, it's the town road, it's the easement of the town road.

MR. TORLEY: There isn't a road there at the moment, it curves around rather than making--

MR. BABCOCK: Yeah, he will have to build his driveway out to the blacktop.

MR. TORLEY: He will be building his driveway out across the town easement?

MR. BABCOCK: Yes, just like everybody else does.

MR. TORLEY: That's not a problem for you?

MR. BABCOCK: No, no, typically, the road is 24 foot wide and the middle of the road and 13 feet of it, of your property most people think it's their property.

MR. TORLEY: As long as it's not going to be a problem with him building a driveway across that.

MR. BABCOCK: No.

MR. REIS: Mr. Brown, is there any culvert necessary to get from the end of your property to the driveway?

MR. BROWN: I don't believe so, sir.

MR. TORLEY: When you do that, check for someone to make sure whether or not a culvert's necessary.

MR. BABCOCK: He's got to apply for a driveway permit and yeah, they go down, the highway department will go down and inspect it and tell him what he has to do.

MR. KANE: Accept a motion?

MR. TORLEY: Yes, unless there's other questions, yes.

MR. KANE: I move that we set up Mr. Donald Brown for a public hearing on his requested variance for a road frontage variance at Cedar Lane.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: One thing you might want to talk about is whether or not you're going to be causing problems of sight lines for drivers onto Cedar Lane, you have to tell us.

MR. KANE: A lot of things may seem very obvious, but we'll talk about them to get them in the record.

MR. BROWN: Okay.

CLEEVES/GATT

Mr. Danny Gatt appeared before the board for this proposal.

MR. TORLEY: Request for use variance for conversion of single family to two family at 38 Quassaick Avenue in an NC zone.

MR. GATT: I'm Danny Gatt, the owner is Ann Cleeves, I'm looking to buy the building off Ann Cleeves and trying to make a two family.

MR. TORLEY: May or may not be aware that the, we operate under state law, so an area variance and use variance, area variance is what we've had up until now, you're asking for a use variance saying I want to use the house for something the zoning code says I can't do.

MR. GATT: Right.

MR. KANE: Very difficult.

MR. TORLEY: State has made use variances by law very difficult, if not impossible to obtain. There's a series of factors you have to demonstrate and if you don't demonstrate all four of them, you fail. The first one is you have to show that by competent, legal authority, appraisers or whatever, that you can't get a reasonable return on the property for any use that it is permitted to have in that zone. In other words, you couldn't sell that one-family house as a one-family house. Didn't say you have to make money, says you can't get a dollar for it, that kind of thing. That's the first one. Second, can't be a self-created hardship. Now you're taking a one-family house that sits there now and trying to say I want to turn it into a two-family house.

MR. GATT: Right, well, I mean, I don't know if it makes a difference but it's been abandoned for a long time.

MR. KANE: Without going into the, even getting to the

other three steps, your main difficulty is going to have to be to prove to this board with a competent authority that that abandoned house or whatever can't be sold at all for a reasonable return, which does not mean make a profit on it, to somebody to use as a single-family home, very difficult.

MR. GATT: It's been on the market for a while.

MR. TORLEY: That's the kind of thing you'd need.

MR. KANE: But you would need to get a real estate agent to come in and back up how much you think he can get for it, what the investment was, maybe legal statements, all that kind of stuff, dollars and cents, actual numbers.

MR. TORLEY: The owner, unless you have a proxy from the owner--

MR. GATT: Yes, she signed it.

MR. TORLEY: The other thing is the self-created hardship, if you say this is my fault that I'm going to have to have this use variance, that in itself stops you.

MR. KANE: To a degree, unless there's exceptional reasons, it could be self-created, but you could prove that you could tear that house down because it's dilapidated and you can't really do anything and it's too expensive to build a one family home there and possibly build a two family would make it reasonable.

MR. GATT: That could happen.

MR. TORLEY: Those are the kinds of things you have to show, we're letting you know you have the right to a public hearing, we want to let you know up front that you have a pretty high mountain to climb to get any use variance which are difficult, so we want to be straight with you on that.

MR. KANE: Most people just don't get it, not to try to sway you.

MR. GATT: That's what I'm here for.

MR. TORLEY: Doesn't matter whether we think it's a great idea or not, we're restricted by state law says X, Y, Z.

MR. KANE: Even if we saw it and totally agreed, our hands are really tied.

MR. BABCOCK: You may need some legal advice to continue with this.

MR. TORLEY: To see whether you want to pursue or not.

MR. GATT: Okay.

MR. TORLEY: You might want to talk to somebody really on use variances.

MR. REIS: And the board's actions here tonight are to just inform you of the chances, it might not seem too secure but they're just doing their job.

MR. GATT: I don't know either, I'm just trying to--

MR. TORLEY: This is why we have preliminary meetings, otherwise, you'd show up after investing all this for a public hearing.

MR. GATT: That's why I don't want to go further until--

MR. KANE: Talk to somebody that, a lawyer or some legal help on what use variances are and what you have, get the information and see if it's a viable thing. We can set you up for a public hearing, it does not mean that you have to take it, you don't have to proceed with it or go through with it, but if you want to, you have already made that step and you're set up for it. So if you want us to proceed, then we can take a vote and set you up.

MR. GATT: I guess I would have to get some facts first.

MR. TORLEY: What we can do is give you the approval to go to a public hearing, when that happens, it's up to you.

MR. KANE: There is no obligation this way, at least you made the first step, if you do want to continue.

MR. TORLEY: Do I hear a motion?

MR. RIVERA: Sure. Make a motion that we set up Mr. Gatt's request for his use variance for conversion of a single family home to a two family at 32 Quassaick Avenue.

MR. TORLEY: 38 Quassaick.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

PUBLIC HEARING:

DIGERATU, MIRCEA

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter?

Mr. and Mrs. Digeratu appeared before the board for this proposal.

MR. TORLEY: You're on.

MR. DIGERATU: We want to build this house and we have once approved but we didn't start to build it on time so the variance expired.

MR. TORLEY: By the photographs appears to be a pond, is that on the property?

MR. DIGERATU: Yes.

MR. TORLEY: Where is he going to put the house?

MR. DIGERATU: Right here.

MR. TORLEY: Does that give us a wetlands issue with the pond?

MR. BABCOCK: They are not in the wetlands.

MR. TORLEY: Is there any, I want to make sure you're set, is there any issues about how far you can be off the wetlands for construction?

MR. BABCOCK: Depends on what the wetlands are, if they're DEC wetlands, there's different regulations.

MR. TORLEY: I see a picture of a pond, that's why I asked.

MR. BABCOCK: Right.

MR. TORLEY: This clearly meets the definition of a uniquely shaped lot.

MR. TORLEY: I don't know how that got through.

MR. KANE: Sooner or later, we've got to run out of these.

MR. REIS: Did you say that at one time you had a variance for this that was approved?

MR. DIGERATU: Yes.

MR. REIS: And the time has since lapsed, that's why you're here again?

MRS. DIGERATU: He had, before we were married, he had a variance.

MR. REIS: Can you tell us how long ago that was?

MR. BABCOCK: It was approved 8/8 of '94, according to my records. At that time, he received a front yard, a road frontage variance and as you gentlemen might remember at the preliminary meeting, Larry brought up the fact that he needs a lot width variance now also because the law has changed where the lot width is measured at the front yard setback, rather than the house line. So there's two variances requested tonight, where back in 1994, he only needed one, he built a garage, he built a garage on this property already, he has an existing garage.

MR. KANE: Building permit or C.O.?

MR. BABCOCK: I don't think it got closed out yet.

MR. TORLEY: You can't just have a garage there, has to be a dwelling, right?

MR. BABCOCK: What happened was he had come in and applied for the building permit to build the house and the garage and decided to build the garage first so he could use it for storage to build the house. And then for reasons unknown, never got to build the house. Now he's back ready to go.

MR. REIS: Should we incorporate into this process,

unless I can't tell from this where you intend to build the house?

MR. BABCOCK: I have a survey.

MR. TORLEY: We don't know whether it has DEC wetlands.

MR. BABCOCK: No, I'll have to have that checked. According to the survey, it's not but--

MR. TORLEY: It's a pretty good sized pond back there.

MR. BABCOCK: He's showing, the surveyor's showing that the septic system is 100 feet away from the edge of the pond.

MR. REIS: According to the applicant's comments, they have indicated, correct me if I'm wrong, I'm just trying to help you, that the garage is going to be in front of the dwelling?

MR. BABCOCK: Basically on the side there, is that where it wound up to be?

MR. DIGERATU: Right.

MR. REIS: The fact that it's forward of the front of the house, Mike, should we take care of that?

MR. BABCOCK: Well, what we call the front yard is measured here.

MR. KANE: That's the new law, so coming back here that's where they're doing the measurements.

MR. BABCOCK: I guess you could look at that either way, though.

MR. REIS: Isn't that an interpretation?

MR. KANE: You can see the garage on that, this one, you can't, there it is, it's over to the left.

MR. REIS: The fact that the garage is going to be in front of the dwelling.

MR. KANE: You might want to straighten that out.

MS. CORSETTI: Needs another variance.

MR. BABCOCK: But again--

MR. TORLEY: Protrudes closer than the primary structure.

MR. BABCOCK: Back in '94, that wasn't the case. Now, today, it says it can't project closer to the street than the principle building, that's correct, you're right, Mike.

MS. CORSETTI: That's 48-14 A.

MR. TORLEY: Can we add another variance at the public meeting?

MR. KANE: 48-14 A.

MS. CORSETTI: Yes.

MR. TORLEY: Is this taken from Beattie?

MR. DIGERATU: Yes.

MS. CORSETTI: Mike, are you going to add that on to the notice of disapproval?

MR. BABCOCK: Yes, I am.

MS. CORSETTI: Thanks.

MR. TORLEY: Mike, the existing garage meets all the setback requirements?

MR. BABCOCK: Yes, it's a detached garage, it's ten feet, Mr. Chairman.

MR. TORLEY: Do you have anymore questions before I open it up to the public? Okay, I'm going to open it up to the public now, please say your name again for the record.

MR. COFFEY: My name is John Coffey, I live at 3 Wagner Drive. Part of the reason I'm here is just to find out a little bit about where the proposed house is.

(Discussion was held off the record)

MR. KANE: Anybody have any comments affirmative or negative about this?

MR. COFFEY: I guess my concern is with all the recent construction over the past few years, another, you know, a variance, basically, this is creating, this is a flag lot, right, and it's something that we're trying to do away with and not have.

MR. KANE: We're not making a flag lot, this is existing as it is.

MR. COFFEY: So some of my questions are a lot of time's elapsed, you talked about the variance back in 1988 or so and now it's 2002 and just questions along those lines and is it appropriate now? Things have changed so much since that time, is it the right use of the property? Is it in line with the town's needs and does it really make sense at this point? And that's really what I want to say. I wish you luck.

MR. TORLEY: Obviously, this is a uniquely shaped lot to put it kindly, so are you opposed or in favor?

MR. COFFEY: I would say I would be opposed to it.

MS. CORSETTI: You're Mr. Coffey, right?

MR. COFFEY: Yes.

MR. TORLEY: Anyone else?

MR. MC NEIL: Tim McNeil, 7 Karen Court, I'm over here. My only comments are that about water, and there's a lot of water, standing water and ponds and there's a creek that runs onto your property and runoff from

Karen Court and Wagner Drive runs onto your property also and I just don't want to create any kind of water problem or water restriction because of any kind of, you know, development.

MRS. DIGERATU: The creek that you're speaking of runs in this area down to this pond.

MR. MC NEIL: Right, that's it. I'm just stating that we don't have a problem now, but I don't want to create something that could impact our situation. But all the water from those two streets, you know, he doesn't drain by the house, but it drains onto your property, I wouldn't want to have anything happen that would alter that.

MR. TORLEY: Your lot slopes down pretty steeply from the back.

MR. MC NEIL: Yes, but the storm drains leave the property at my house and go and follow the contour of the ground and that's onto your property, that's what I'm concerned about.

MR. KANE: Thank you.

MR. TORLEY: Anyone else wishing to speak? Are you satisfied now? In that case, I'll close the public hearing and open it back up to the members of the board.

MR. RIVERA: How many notices were sent out?

MS. CORSETTI: Thirty-one, according to this list and I'll tell you the date as soon as I find the piece of paper. I can't find it but 31 notices were sent out in a timely fashion.

MR. TORLEY: Gentlemen, this area in the back is all very, very wet, if you look at the shape of the other lots off James Wilkerson, all the houses are right next to the road because further back, it's all wet. So this area just is a drainage for the whole sector. You can see the size of the other lots. Now, if we grant you these variances, a variance is for area setbacks,

does not relieve you from any other part of the building code or sanitary code or anything like that, so just want to make you aware of that.

MRS. DIGERATU: All right.

MR. TORLEY: If these variances were granted, do you have some idea when this would be completed?

MRS. DIGERATU: Once we get the building permit, we're going to looking for--

MR. KANE: Speak up.

MRS. DIGERATU: Once the variances are done and we hope to within the next month or so start, you know, planning the construction.

MR. KANE: We had some concerns over the water going to that creek, how are you going to address that in any way when you build the house? Couple of the people in the audience, your neighbors had some concerns with the way the water flows to the back over here, you were showing where the creek is?

MRS. DIGERATU: That shouldn't be any change to that.

MR. TORLEY: These people are way down the hill. We just want you to go through because we don't want the variance to expire again because we may or may not be able to renew it. Gentlemen, do you have any other questions?

MR. REIS: No, sir.

MR. KANE: Again, what happened that let the other variance run out?

MRS. DIGERATU: He didn't realize that it would expire.

MR. DIGERATU: I didn't realize there was a limit.

MR. TORLEY: We don't want to be taking five years to build a house.

MRS. DIGERATU: No, it won't.

MR. TORLEY: Because during the construction time, it's always a hassle for neighbors, so we want to minimize that time. So you're anticipating you're saying the next few months?

MRS. DIGERATU: One of the requirements for completion, the banks that we talked to require completion within a year.

MR. KANE: Is it possible on the variance for us to put any kind of a time limit for completion of the structure on that?

MR. REIS: There is in the town.

MR. BABCOCK: There already is, it's 18 months.

MR. TORLEY: That's the kind of timeframe you're looking at?

MRS. DIGERATU: Yes.

MR. KRIEGER: I answered that without saying anything, it's the best kind of answer.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: With due respect to the neighbors' concerns, this 7.9 acre parcel, its best use is as a single family home, I make a motion that we grant the Digeratu family their requested variance at 537 Beattie Road.

MR. TORLEY: May I make a suggestion? Would you be willing to stipulate that this will be a one-family dwelling, not going to put another house back there?

MR. DIGERATU: That's one familiar.

MR. TORLEY: One family, a single family house on this property?

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MR. DIGERATU: Yes, sir.

MR. KANE: Second that notation.

MS. CORSETTI: With the additional variance that they're asking for for Section 48-14 A, the garage projecting closer to the road than the principle structure.

MR. REIS: Thank you for reminding us.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

DEAN, SAMUEL

MR. TORLEY: Request for variation of Section 48-14A(4) to allow a shed to project closer to road than principle structure on corner lot, 15 Clintonwood Drive, in an R-4 zone. What we can do is we can open this and close the public hearing and adjourn the meeting, we can do that, right, since there's nobody here for this one?

MR. KRIEGER: Yes.

MR. TORLEY: Is there anyone in the audience wishing to speak on this matter? There being none, we'll so note. So we have opened and closed the public hearing.

MR. KANE: I make a motion that we table the meeting concerning Samuel Dean until the next meeting, until the 25th.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

FIDANZA, FRANCO

MR. TORLEY: Request for 22 ft. front yard variance for addition at Planet Wings on Windsor Highway in a C zone.

Mr. Philip Higby appeared before the board for this proposal.

MR. HIGBY: My name is Philip Higby, I'm the architect. Mr. Fidanza is here, he's the owner.

MR. TORLEY: Before you begin, a formality, is there anyone in the audience besides the applicants wishing to speak to this matter? Let the record so note there is none.

MR. HIGBY: We have an application to the zoning board to get an area variance to the front yard from the required 60 feet to the 38 feet and we have shown on the site plan what we'd like to do is to, what Mr. Fidanza would like to do is to upgrade his building by putting on the addition to basically renovate a building that no longer meets his needs. He's basically outgrown the building, so he's looking to add square footage in the front to do the upgrade. We're here, we want to do the addition, if we get the approval, then we go back to the planning board for basically completion of the planning board review. But we're being sent here just because of the variance for the front yard. Now, the front yard, in looking at the plan, basically, the plot plan is a, the parcel is 5/10 of an acre and it's pre-existing, non-conforming lot in that it's 1/2 acre, 22,000 square feet as opposed to the required 40,000 and it also is the lot width is 100 feet as opposed to 200 feet. Basically, the only place that we can do anything with the building at all is in the front yard. The intent is to generate additional dining room space, the back of which is currently a small area in the front of the building, the back of the building is the kitchen service and whatnot so and the width of the property, as I say, is 100 feet. There's no room left to right to go out either side, currently taken up by the aisle and the parking spaces for the building, so we're looking to delete four

spaces I believe in front of the building and recreate 6 spaces in the back of the building, so we end up with a net increase of two parking spaces but we're looking to really to dress up the building with the addition and make a betterment for the neighborhood.

MR. KANE: Even with the addition coming on, you're going to be adding 25 parking spaces which will put you 7 over the requirement for that?

MR. HIGBY: Eighteen required, yes, that's correct. What we're looking to do is to again put the addition in the front yard, but also to dress it up, not only the addition to be aesthetically pleasing, but also, you know, to do something with the remainder of the building, some interior modifications, as well as dressing up the outside. And obviously, as I say, this is a building that needs to have the expansion, needs to have the upgrade because of Mr. Fidanza's growth in the business, it basically, the existing building, it cannot be upgraded, does not suit his needs, in a nutshell. So we're looking to get the approval from the zoning board in order to proceed on that. The area in the front of the building we're looking to create a little outdoor landscape seating area, nothing that would handle a huge amount of tables, maybe two or three tables to get some exposure to the building to allow patrons to go out on nice days to eat outside and also do some low shrubbery landscaping as well. It also serves to enhance the directional flow of traffic through the parcel, in terms of one way in, one way out. The curb cuts are existing, so we're not really looking to do anything with that, so basically maintaining the traffic flow. There are other improvements that Mr. Fidanza would like to do with the approval on this again dressing up the outside of the building, possibly repaving the parking lot, restriping the parking lot and as I say, a general upgrade on the outside appearance of the building.

MR. KANE: Any sign changes on the building?

MR. HIGBY: On the building, there will be letters on the building, yes.

MR. KANE: So you're using the existing building signs are going to remain right now?

MR. HIGBY: Well, they'll been upgraded, per se, in terms of--

MR. KANE: But within the same dimensions? Otherwise, you may need another variance.

MR. HIGBY: There's something in the zoning ordinance 25 square feet of signage which I believe would probably fit with the, you know, new signage in terms of channel letters on the building, yes.

MR. TORLEY: Does the freestanding sign meet the code as it stands?

MR. BABCOCK: It's not really telling me what the size is.

MR. TORLEY: I'm looking at the picture, sure doesn't look like it.

MR. KANE: But it's existing right now.

MR. BABCOCK: The top piece does, I would say that that is probably 4 x 8, the bottom I would assume is the changeable letters, you know, showing his specials.

MR. TORLEY: If we can clean everything up at once.

MR. KANE: Without the measurements, it would be hard.

MR. TORLEY: We'll have to put that aside.

MR. TORLEY: There are two letters from adjoining property owners I want to read into the record.

MS. CORSETTI: Can I put in the record that on February 25, we sent out 44 legal notices to adjacent property owners and we got two back from Florida and you got four, thanks, or three, very good.

MR. TORLEY: From Mr. Rudolph Rotmeyer.

MS. CORSETTI: That's Rudy's Pork Store.

MR. TORLEY: "I'm against the permit of a variance to the zoning law 60 foot setback. The reason would be difficult for customers coming from the north to make out our building." The second one is from Mr. Charles Catanzaro who owns the property on the other side.

MS. CORSETTI: He's within the area.

MR. TORLEY: This isn't adjacent property.

MR. TORLEY: Florida fax, Florida telephone, just says adjacent property.

MS. CORSETTI: He owns 45, 1, 41.1.

MR. TORLEY: It says "Zoning board of appeals rules are made not to be broken. I'm an adjacent property owner and I feel strong that the projected front yard setback will impede the view of my property from oncoming traffic, thus reducing the value of my property making it more difficult to rent. I will ask the board not to grant the variance." One thing I never heard of anything in the code that you have a right to be seen across somebody else's property.

MR. HIGBY: I'm, it's the neighbor on either side? I'm confused.

MS. CORSETTI: The other is Catanzaro, 45, 1, 41.1, here's Catanzaro's property here.

MR. KANE: West of?

MS. CORSETTI: Applicant's property is 40.21 right here.

MR. TORLEY: Not the next door neighbor, the one further down, what's that?

MR. REIS: That's where the karate place is.

MR. BABCOCK: It's a karate school.

MR. HIGBY: I think you'd be passed our addition before you start to see his building, I mean, the other thing that's happening, too, is you can probably see it in the picture is the lay of the land comes down where Mr. Fidanza's building is basically in the middle on either side of the property, you know, if you're coming down, it's not going to obstruct anything on the one side and on the other side of the building is already down low and you wouldn't be able to see it in front.

MR. TORLEY: You have the existing sign, how high is the new building going to be?

MR. HIGBY: One story really hasn't been designed yet, but I'd say probably 20 feet, something of that nature.

MR. TORLEY: It looks like it would protrude maybe five feet closer to the road than they are, according to the Rotmeyer plan.

MR. HIGBY: Yeah, maybe five or ten, they're already, you know, they're arguing against themselves because they're already ahead of our building as it is.

MS. CORSETTI: You should complain about them.

MR. HIGBY: That's right.

MR. TORLEY: This new construction will not impede the sight lines as far as traffic anyway.

MR. HIGBY: No, we're going to be back still from the property line itself, the property line is right near the base of the sign post behind it and from the sign post, you've probably got another 15 to 18 feet to the actual right-of-way of the road pavement, so 15 to 18 plus the 38 feet you're 45 to 50 feet back from the edge of the pavement, in any event. So, I mean, that's plenty of room for at least two to three cars to stack there, you know, without their vision being impaired either way.

MR. TORLEY: I'm glad to see a businessman succeeding to the point that he needs to expand his business.

MR. KANE: It's a lot of wings.

MR. REIS: Just for the record, would it be economically feasible to lessen the requested variance and still accomplish what you need?

MR. HIGBY: We have toyed with that, but he's basically, we've gone around and said this is what we need in order to expand.

MR. TORLEY: Were you to put the new dining area on the back side, you'd be building a dining area next to the food preparation site?

MR. HIGBY: Truck comes in, does the unloading, the service food preparation, carried out to the dining room in the front.

MR. KRIEGER: If you put it in the back, it would interfere with the truck unloading?

MR. HIGBY: Yes, it would, but the whole interior operation of the store it would have to be gutted, the plumbing, yes, yes.

MR. TORLEY: Economically clearly an unfavorable result?

MR. HIGBY: Yes.

MR. KANE: In the building you're not going to be creating any water hazards or anything along those lines?

MR. HIGBY: No.

MR. TORLEY: Not encroaching on any water or sewer easements?

MR. HIGBY: No.

MR. KANE: You feel the building itself is going to be similar, it's not going to change the character of the neighborhood you're in now?

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MR. HIGBY: No, I think it will be an improvement.

MR. KANE: Thank you. Accept a motion?

MR. TORLEY: Yes.

MR. KANE: I move we approve the application by Frank Fidanza for his requested variance at Planet Wings on Windsor Highway.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

FORMAL DECISIONS

1. BETRIX
2. SISTERS OF PRESENTATION

MR. KANE: I move that we accept both formal decisions as written.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: Motion to adjourn?

MR. RIVERA: So moved.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

Respectfully Submitted By:

A handwritten signature in cursive script, appearing to read 'Frances Roth', written in black ink.

Frances Roth
Stenographer

In the Matter of the Application of
SISTERS OF THE PRESENTATION

**MEMORANDUM OF
DECISION GRANTING
AREA VARIANCES**

#01-44.

WHEREAS, SISTERS OF THE PRESENTATION, Children's Country Day School at Mt. St. Joseph, 880 Jackson Avenue, New Windsor, New York 12553, has made application before the Zoning Board of Appeals for variances for three (3) single-faced, freestanding signs: (1) 4 sq. ft.; (2) 4 sq. ft. for 2nd sign; (3) 23 sq. ft., plus a variance for two additional single-faced, freestanding signs (only 1 permitted) at the above location in an NC zone; and

WHEREAS, a public hearing was held on the 17th day of December, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Applicant appeared by Fred Visconti, an officer of Children's Country Day School; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in favor or in opposition to this Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a commercial property located in a neighborhood of mixed commercial and residential properties, located on a busy state highway.

(b) The property is utilized by a religious Order for a number of uses, including use for a country day school.

- (c) The proposed freestanding signs would be in the present location. The Applicant seeks the additional sign space so that notices of school events may be placed on the sign.
- (d) The signs will be located a sufficient distance from the roadway and in a sufficient location so as not to interfere with the operation of motor vehicles on the adjacent highway.
- (e) The signs will not be illuminated with use of neon.
- (f) The signs will not be flashing.
- (g) The signs will not be placed over any water or sewer easements. Since the premises are served by municipal water and sewer, there are no wells or septic system that the proposed signs will interfere with.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variances requested are substantial in relation to the Town regulations but nevertheless are warranted.
4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations are self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variances are appropriate and are the minimum variances necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
8. The interests of justice will be served by allowing the granting of the requested area variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a variation of Section 48-18 of the Supplemental Sign Regulations to permit signage as requested in paragraph one above, located at 880 Jackson Avenue, in an NC zone as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: March 11, 2002.

Lawrence W. Torley
Chairman

In the Matter of the Application of

DAVID BETRIX

MEMORANDUM OF
DECISION GRANTING
AREA VARIANCE

#01-42.

WHEREAS, DAVID BETRIX, residing at 55 Old Temple Hill Road, Vails Gate, N. Y. 12584, has made application before the Zoning Board of Appeals for an 11 ft. rear yard variance to allow an existing addition at the above single-family residence in a C zone; and

WHEREAS, a public hearing was held on the 17th day of December, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared on behalf of himself for this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in favor or in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a residential property consisting of a one-family home located in a C zone.

(b) An addition to the house has been erected and has existed for approximately 25 years.

(c) There have been no complaints either formally or informally about the addition.

- (d) With the addition, the house is consistent with other structures in the neighborhood..
- (e) The addition does not create any water hazards or runoffs, or divert the flow of water or cause the ponding or collection of water.
- (f) The addition is not built over any water or sewer easements.
- (g) The property is served by commercial water and sewer and therefore there is no well or septic system.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variance requested is substantial in relation to the Town regulations but nevertheless is warranted for the reasons listed above.
4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variance is appropriate and is the minimum variance necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
8. The interests of justice will be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for an 11 ft. rear yard variance for an addition at the above address, in a C zone as sought

by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: March 11, 2002.

Lawrence W. Torley
Chairman